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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

OLGA ORTMANN and JUSTIN
OPYRCHAL, individually, and on behalf
of all other similarly situated current and
former employees of Defendants in the
State of California,

Plaintiffs,

v.

NEW YORK LIFE INSURANCE
COMPANY, INC., a New York
corporation; NEW YORK LIFE
INSURANCE AND ANNUITY
CORPORATION, INC., a Delaware
corporation; and DOES 1 through 100
inclusive,

Defendants

Case No. CV07-518-VBF (VBKx)
CLASS ACTION

Deleted: SVW

**ORDER GRANTING FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: March 9, 2009

Time: 1:30 p.m.

Courtroom: 9

Judge: Hon. Valerie Baker Fairbank

On March 9, 2009, the Court heard a motion by Plaintiffs, Olga Ortmann (“Ortmann”) and Justin Opyrchal (“Opyrchal”), on behalf of themselves and all others similarly situated, for final approval of a proposed class action settlement.

1 The Parties have submitted the proposed Settlement, which this Court
2 preliminarily approved in its October 27, 2008 order. Having received and
3 considered the Settlement, the supporting papers, the response of the Class
4 Members to the Notice of Settlement, and the evidence and argument received
5 by the Court at the preliminary approval hearing held on October 27, 2008 and
6 the Final Approval Hearing on March 9, 2009, by mean of this order (the
7 “Order of Final Approval”) the Court grants final approval to the Settlement,
8 and HEREBY FINDS and ORDERS as follows:

9 1. Except as otherwise specified herein, the Court for purposes of this
10 Order of Final Approval adopts all defined terms set forth in the Settlement.

11 2. Pursuant to the Preliminary Approval Order, a Notice Packet was
12 sent to each Class Member by first-class mail. The Claims Administrator took
13 reasonable steps to provide the Notice Packet to Class Members when it learned
14 that the address to which those documents were mailed was no longer accurate.
15 These documents informed Class Members of the terms of the Settlement, their
16 right to claim a share of the settlement proceeds and the procedure therefore,
17 their right to object to the Settlement or to opt out of the Settlement and pursue
18 their own remedies, and their right to appear in person or by counsel at the Final
19 Approval Hearing and be heard regarding the final approval of the Settlement.
20 Notice was provided with ample time for the Class Members to follow these
21 procedures.

22 3. The Court finds that this notice procedure afforded adequate
23 protections to Class Members and provides the basis for the Court to make an
24 informed decision regarding approval of the Settlement based on the responses
25 of Class Members. Notice was accomplished in all material respects in the
26 manner prescribed by the Settlement. The Court finds that the notice provided
27 notice to all persons entitled to such notice in this case, was the best notice
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1 practicable, and, therefore, fully satisfied the requirements of due process.

2 4. The Court hereby unconditionally certifies the Class, as defined in
3 the Settlement, for purposes of settlement only “all persons who performed
4 work as insurance agents for New York Life in the State of California from
5 December 11, 2002 through the Preliminary Approval Date, pursuant to a
6 Training Allowance Subsidy Plan Agreement (“TAS Agreement”).” For the
7 reasons stated in the Preliminary Approval Order, this Court finds that the Class
8 meets the legal requirements for class certification under Federal Rule of Civil
9 Procedure 23 (“Rule 23”).

10 5. The Court hereby approves the Settlement as set forth in the
11 Stipulation and finds that the Settlement is, in all respects, fair, adequate, and
12 reasonable. The Court makes this finding based on a weighing of the strength
13 of Plaintiffs’ claims and Defendants’ defenses with the risk, expense,
14 complexity, and duration of further litigation. The Court also finds that the
15 Settlement is the result of non-collusive arms-length negotiations between
16 experienced counsel representing the interests of the Class and New York Life,
17 after thorough factual and legal investigation. In granting final approval of the
18 Settlement, the Court considered the nature of the claims, the amounts and
19 kinds of benefits paid in settlement, the allocation of settlement proceeds among
20 the Class Members, and the fact that the Settlement represents a compromise of
21 the parties’ respective positions rather than the result of a finding of liability at
22 trial. Additionally, the Court finds that the terms of the Settlement have no
23 obvious deficiencies and do not improperly grant preferential treatment to any
24 individual Class Member. The Court further finds that the response of the Class
25 to the Settlement supports final approval of the Settlement. Specifically, no
26 Class Member objects to the Settlement. Accordingly, pursuant to Rule 23(e),
27 the Court finds that the terms of the Settlement are fair, reasonable, and
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adequate to the Class and to each Class Member. *Staton v. Boeing*, 327 F.3d 938, 960 (9th Cir. 2003). The Court also hereby finds that Plaintiffs have satisfied the standards and applicable requirements for final approval of this class action settlement under Rule 23.

6. The Court hereby finds the Maximum Settlement Amount provided for in the Settlement to be fair, reasonable, and adequate.

7. The Court orders the Parties to implement, and comply with, the terms of the Settlement.

8. Nothing in this Order of Final Approval precludes any action to enforce the Parties' obligations under the Settlement or under this Order.

9. The Court also approves the settlement of the Released Claims as defined in the Settlement. The Court authorizes and directs the Claims Administrator to calculate and pay the claims of all Qualified Claimants in accordance with the terms of the Settlement. By stipulation of the parties, in Court today, and approved by this Court, any late claims postmarked by March 9, 2009, shall be considered a "timely" claim form, and paid from the "settlement proceeds".

10. That Plaintiffs' counsel, Pope, Berger & Williams, LLP, Marlin & Saltzman, Law Offices of Douglas J. Campion and Law Offices of Peter M. Hart, are designated as Class Counsel for the purposes of accomplishing and effectuating the settlement.

11. The Court also approves the payment of \$105,000.00 to Rosenthal & Company LLC for the costs of administering the Settlement as set forth in the Settlement.

12. As of the Effective Date of the Settlement, as defined in the Settlement, all of the Released Claims of each Class Member who did not

1 timely opt out, as well as the Class Representatives' Released Claims, are and
2 shall be deemed to be conclusively released as against the New York Life
3 Releasees (as defined by the Settlement). As of the date of this Order of Final
4 Approval, all Class Members who did not timely opt out are bound by the
5 instant Order of Final Approval and Judgment, and the Settlement. Except as to
6 such rights or claims that may be created by the Settlement, all Class Members
7 as of the date of this Order of Final Approval who did not timely opt out are
8 hereby forever barred and enjoined from commencing or prosecuting any of the
9 claims, either directly, representatively or in any other capacity, that are
10 released by the Settlement against any of the New York Life Releasees.

11 13. The Court finds that the individuals listed on Exhibit A hereto
12 submitted timely Opt Out Requests and, accordingly, are not bound by the
13 terms of the Settlement or the Judgment in this Action.

14 14. Neither the Settlement nor any of the terms set forth in the
15 Settlement constitute an admission by the Defendants, or any of the other New
16 York Life Releasees, of liability to the Plaintiffs or any Class Member, nor does
17 this Order of Final Approval constitute a finding by the Court of the validity of
18 any of the claims alleged in the Action, or of any liability of the Defendants or
19 any of the other New York Life Releasees. Neither the making of nor entering
20 into the Settlement constitutes an admission by the New York Life Releasees;
21 nor is this Order of Final Approval or this Judgment a finding of the validity of
22 any claims in the Action or of any other wrongdoing. Further, the Settlement is
23 not a concession and shall not be used as an admission of any wrongdoing, fault
24 or omission of any entity or persons; nor may any action taken to carry out the
25 terms of the Settlement be construed as an admission or concession by or
26 against the New York Life Releasees. Evidence of the making or entering into
27 the Settlement shall not be offered or received into evidence in any action or
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1 proceeding against any party hereto in any Court, or other tribunal for any
2 purpose, other than to enforce the instant Order of Final Approval, the instant
3 Judgment, or the Settlement, or to support a defense by the New York Life
4 Releasees of res judicata, collateral estoppel, release, good faith settlement,
5 judgment bar or reduction.

6 15. Without affecting the finality of the Settlement or the Judgment in
7 any way, the Court shall retain exclusive and continuing jurisdiction over this
8 Action and the Parties, including all Class Members, for the purposes set forth
9 in the Settlement.

10 16. The Court hereby grants final approval of the Settlement and, in
11 accordance with the terms of the Settlement, hereby enters judgment approving
12 the terms of the Settlement and ordering that the Action be dismissed in
13 accordance with the Settlement. The Complaint is dismissed on the merits with
14 prejudice on a class-wide basis. The Class Representatives' Released Claims,
15 as set forth in the Settlement, are dismissed on the merits with prejudice.
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17 17. If the Settlement does not become final and effective in accordance
18 with the terms of the Settlement, this Order of Final Approval and Judgment
19 and all orders entered in connection herewith shall be vacated and shall have no
20 further force or effect.

21 18. That Class Counsel shall file an accounting showing proof of
22 payments made to Class Members submitting timely claims on or before
23 November 16, 2009.
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1 19. That Class Counsel shall file an accounting showing proof of
2 payments made to Class Members submitting late claims on or before
3 November 16, 2009.

4 IT IS SO ORDERED.

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7 Date: 03-09-09



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10 Hon. Valerie Baker Fairbank
11 United States District Judge
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